

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

RADOSLAV DIMITRIC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. G-07-247
	§	
TEXAS WORKFORCE COMMISSION,	§	
<i>et al.</i> ,	§	
Defendants.	§	

ORDER

In this suit filed by Radoslav Dimitric against the Texas Workforce Commission, Texas A&M University - Galveston, and numerous individual defendants, this court has reviewed the Report and Recommendation of the United States Magistrate Judge signed on January 28, 2009, the plaintiff's objections and motions, the record, and the applicable law. Based on this review, this court has made a *de novo* determination of the Magistrate Judge's recommended disposition. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C); *United States v. Wilson*, 864 F.2d 1219 (5th Cir. 1989).

In the Report and Recommendation, the Magistrate Judge analyzed whether Dimitric should be entitled to amend his complaint for the fifth time. In ruling on Dimitric's motion, (Docket Entry No. 142), the Magistrate Judge properly analyzed Dimitric's request, the defendants' opposition, (Docket Entry No. 144), and the applicable law and concluded that Dimitric should not be allowed to amend his complaint. This court finds that the Magistrate Judge's ruling is supported by the record, correctly applied the standards under Rule 15 of the Federal Rules of Civil Procedure, and that further amendment would be futile. Dimitric's objections, (Docket Entry No. 154), are overruled.

In the Report and Recommendation, the Magistrate Judge also analyzed the defendants' Motion for Summary Judgment as to Dimitric's remaining claims. (Docket Entry No. 119). The remaining claims as to which the defendants sought summary judgment were the defamation claim against Brown and Smith; a claim for a violation of the Older Workers' Benefit Act, Pub. L. 101-422, 29 U.S.C. §§ 623, 626, 630(f); a claim under 29 U.S.C. § 626; and a claim under the "State of Texas equivalent" to Title VII (Tex. Labor Code § 21.001 *et seq.* (Vernon 2006)). The Magistrate Judge recommended that the defendants' summary judgment motion should be granted and the action dismissed. This court finds that the Magistrate Judge's rulings are supported by the record and correctly apply the governing law. Dimitric's objections, (Docket Entry No. 154), are overruled.

This court adopts the Report and Recommendation as this court's Memorandum and Order, granting the defendants' Motion for Summary Judgment. Based on the grant of the defendants' most recent summary judgment motion, this court dismisses the remaining claims, with prejudice.

In separate orders entered on March 9, 2009, the Magistrate Judge granted Dimitric's unopposed Motion to Extend Page Limits Re His Answer to Defendants' Motion for Summary Judgment (Revised)," (Docket Entry No. 135); denied as without merit Dimitric's "Motion for the Court to Subpoena Original Record of Magistrate Judge Froeschner's Court Hearing," in which Dimitric asserted that the Magistrate Judge had ordered the court reporter to place a false transcript in the record, (Docket Entry No. 152); granted the defendants' motions to exclude expert witnesses identified by Dimitric, most of whom had expertise on matters or claims that had already been dismissed, (Docket Entry Nos. 102, 104, 105, 106, 107, and 108); denied Dimitric's "Motion to Dismiss/Deny Defendants' Motion to Exclude Plaintiff's Expert Witnesses," (Docket Entry No. 110), finding that the motions to exclude were well-founded; denied Dimitric's "Motion for Court to Compel Defendants' Production of Documents, Materials and Tangible Things," (Docket Entry

No. 94), which sought an order compelling production on the ground that the defendants' responses to discovery requests were late, finding that the motion was frivolous; and denied as moot the defendants' "Motion to Stay Discovery and Response In Opposition to Plaintiff's Motion for Court to Toll the Timeline," (Docket Entry No. 95).

None of these motions affect the basis for granting the defendants' summary judgment motion. In addition to the grounds relied on by the Magistrate Judge in the orders entered on March 11, 2009, this court's grant of the defendants' summary judgment motion moots Dimitric's Motion for the Court to Subpoena Original Record of Magistrate Judge Froeschner's Court Hearing, (Docket Entry No. 152); moots defendants' motions to exclude expert witnesses identified by Dimitric, (Docket Entry Nos. 102, 104, 105, 106, 107, and 108); moots Dimitric's "Motion to Dismiss/Deny Defendants' Motion to Exclude Plaintiff's Expert Witnesses," (Docket Entry No. 110); moots Dimitric's "Motion for Court to Compel Defendants' Production of Documents, Materials and Tangible Things," (Docket Entry No. 94); and moots the defendants' "Motion to Stay Discovery and Response In Opposition to Plaintiff's Motion for Court to Toll the Timeline," (Docket Entry No. 95).¹

Also pending before this court are Dimitric's "objections" and two motions for reconsideration of this court's Order signed January 29, 2009, adopting the Magistrate Judge's Report and Recommendation. (Docket Entry Nos. 148, 150, 153). In his objections, Dimitric criticizes the court's review. In his first motion for reconsideration, filed on February 9, 2009, Dimitric asks the court to reconsider its order declining to require United States Magistrate Judge Froeschner to be removed from involvement in this case. (Docket Entry No. 150). In his second

¹ Because these motions are moot as a result of the grant of the defendants' summary judgment motion, there it is unnecessary to wait for Dimitric to object to the separate grounds on which the Magistrate Judge ruled on those motions.

motion for reconsideration, filed on February 11, 2009, Dimitric asks this court to reconsider its order dismissing his claim under the Equal Pay Act—a decision which was based on res judicata and collateral estoppel. (Docket Entry No. 153.). Dimitric’s objections and his requests for reconsideration essentially repeat what he has argued before, without support in the record or in the law. The objections are overruled as frivolous and the requests for reconsideration are denied as frivolous.

In conclusion, the adoption of the Magistrate Judge’s Report and Recommendation leads to the denial of Dimitric’s “Motion to Amend His Complaint,” (Docket Entry No. 142), the grant of the defendants’ Motion for Summary Judgment, (Docket Entry No. 119), and the overruling of Dimitric’s objections, (Docket Entry No. 154). In addition, Dimitric’s objections, (Docket Entry No. 148), are overruled; and his Motions for Reconsideration (Docket Entry No. 150 and 53), are denied.

This order, with the prior orders in this case, disposes of the remaining claims. Final judgment is entered by separate order. Dimitric is to pay costs of court.

SIGNED on March 13, 2009, at Houston, Texas.



Lee H. Rosenthal
United States District Judge